

4. FXG does not deliver packages directly. Instead, FXG has developed a network of independent corporate business entities throughout the United States and Canada that provide package pickup and delivery services with their own vehicles and their own employees. Such business entities are referred to as independent service providers (“ISPs”). There currently are approximately 4500 ISPs in FXG’s network. Additionally, FXG contracts with transportation service providers (“TSPs”) to provide linehaul services.

5. FXG enters into contracts with ISPs to provide pickup and delivery services within defined contracted service areas, which are comprised of multiple “routes” (a colloquial reference). Once FXG enters into a contract with an ISP for a given route, that ISP can assign its interest in the contract to another independent corporate business entity subject to the terms of the parties’ contract. Thus, FXG contracts (and the routes pursuant to such contracts) can be assigned (bought or sold), and can appreciate or depreciate in value.

6. Mr. Patton owns companies that contract with FXG for package pickup and delivery services.

7. Specifically, Mr. Patton is the founder and President of four ISPs — Patton Logistics, Inc., Goliath Freight, Inc., Testament Trucking, Inc., and West Iris Transport, Inc. (“Patton ISPs”) — that have contracts with FXG for routes in different geographic areas.

8. Mr. Patton has generated additional revenue and, upon information and belief, additional substantial profit as a result of his ownership of another company through which he leverages his relationship with FXG and his role as the owner of four ISPs.

9. Mr. Patton is the founder and President of Route Consultant, which is a consultancy business for ISPs and TSPs and those considering starting an ISP or TSP business. Route Consultant provides advice on, among other things, buying and selling FXG routes, ISP

and TSP ownership and operations, and fleet strategy. Specifically, Route Consultant purports to offer “consulting services to new and experienced professionals in the logistics community [that] . . . include acquisition strategy, business valuations, operations, efficiency, post-close support, compliance review, and . . . maintains an exclusive portfolio of routes and runs for sale across the United States.” Route Consultant purports to be “the leader in education for owners of FedEx Ground . . . logistics operations.”

10. Mr. Patton markets Route Consultant to current ISPs and TSPs and those considering starting an ISP or TSP business. In that regard, Mr. Patton advertises and/or promotes Route Consultant through various channels, including, among other things, (i) periodic webinars and videos available on Route Consultant’s YouTube channel; (ii) Route Consultant’s website at <https://www.routeconsultant.com>; (iii) social media; and (iv) annual conferences (this year held on August 20-21, 2022 in Las Vegas).

11. Beginning in or around July 2022, Mr. Patton launched a campaign to promote his Route Consultant business by creating a fictionalized crisis between FXG and its ISPs and TSPs as an advertisement for the purported need for Route Consultant’s consultancy and other services. In a series of promotional communications directed toward ISPs and TSPs posted on Route Consultant’s website and YouTube channel, Mr. Patton, on behalf of Route Consultant, has exaggerated and misrepresented the purported financial hardships of the ISPs and TSPs in the current economic conditions — challenges that many businesses are facing. The essence of Mr. Patton’s campaign is that FXG’s network of ISPs and TSPs supposedly is “in significant peril” and FXG supposedly is “completely tone deaf” and a “bully” in response to such purported financial hardships of its ISPs and TSPs.

12. One apparent purpose of Mr. Patton's campaign against FXG is to influence large numbers of ISPs to seek to renegotiate their contracts with FXG and then to position himself on behalf of Route Consultant in the middle and as a beneficiary of those renegotiations — either as the representative of ISPs generally in collective negotiations with FXG or as a consultant to particular ISPs in their individualized negotiations with FXG.

13. Another apparent purpose of Mr. Patton's campaign against FXG is to drive business toward Route Consultant's various services offered to ISPs and TSPs, including, among other things, (i) consultancy services; (ii) brokerage services for ISPs and TSPs interested in selling their businesses and assigning their ISP or TSP contracts; (iii) instructional courses and programs; (iv) the Route Consultant Purchasing Alliance; and (v) Hello Truck Lease.

14. Such other services are extremely lucrative to Route Consultant.

15. Mr. Patton's campaign against FXG on behalf of Route Consultant also served to drive attendance at Route Consultant's annual conference in Las Vegas on August 20-21, 2022.

16. It likewise has afforded Mr. Patton a prominent platform on multiple media outlets to promote Route Consultant in general and Route Consultant's annual conference in Las Vegas on August 20-21, 2022 in particular.

17. Accordingly, Mr. Patton's campaign against FXG in fact is a promotional campaign for the consultancy, brokerage and other services of Route Consultant directed toward ISPs and TSPs.

18. In Mr. Patton's zeal to promote Route Consultant to ISPs and TSPs, Mr. Patton has made several false or misleading statements concerning FXG's business as discussed below.

19. For example, Mr. Patton has stated in promotional communications that the "current CSP financial model is collapsing due to substantial increases in the cost of fuel, labor,

and vehicles over the past 12 months” and “there has been no financial adjustment [by FXG] in any capacity” for ISPs and TSPs that desperately need it.

20. While the current economy is a challenge for all businesses, the reality is that FXG’s service providers earn average annual revenue of approximately \$2.3 million dollars, a figure that has doubled over the last four years. Contrary to Mr. Patton’s false or misleading claims about the number of service providers that purportedly are in financial distress, ISPs have sought mid-contract renegotiations for only about 10% of their agreements in 2022. FXG has consented to approximately 40% of renegotiation requests since July 1, 2022 and over 90% of those renegotiations led to agreement on new terms that resulted in higher contractual payments to the ISPs.

21. Mr. Patton’s communications also ignore that, in addition to the renegotiations that have occurred mid-contract, ISP contracts are short-term in any event — between 12 and 18 months — so that service provides are not locked into pricing given potential fluctuations in economic conditions.

22. In fact, some of Mr. Patton’s own ISPs just entered into new contracts with FXG in May and June 2022 — less than three months ago.

23. As described herein, Mr. Patton’s false or misleading statements concerning FXG’s business in connection with promoting the consultancy services of Route Consultant violate the Lanham Act, 15 U.S.C. § 1051 *et seq.* and the Tennessee Consumer Protection Act, T.C.A. §§ 47-18-104 & 109.

PARTIES

24. Plaintiff FedEx Ground is a Delaware corporation with its principal place of business at 1000 FedEx Drive, Moon Township, Pennsylvania 15108.

25. Defendant Route Consultant, Inc. is a Tennessee corporation with its principal place of business at 5511 Virginia Way, Brentwood, Tennessee 37027. Mr. Patton is the President and founder of Route Consultant.

JURISDICTION AND VENUE

26. This Court has jurisdiction over the subject matter of FXG's Lanham Act claims pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1121(a) (action arising under the Lanham Act), and 28 U.S.C. § 1338(a)&(b) (action arising under an Act of Congress relating to trademarks and related unfair competition claims).

27. This Court has supplemental jurisdiction over the subject matter of FXG's state law claims pursuant to 28 U.S.C. § 1367.

28. In addition and/or in the alternative, this Court has jurisdiction over the claims in this action under 28 U.S.C. § 1332 because the matter in controversy exceeds \$75,000 and is between citizens of different states.

29. This Court is a proper venue for this action under 28 U.S.C. § 1391 because (a) Route Consultant's principal place of business is in this judicial district, and (b) a substantial part of the events or omissions giving rise to the claims herein occurred in this judicial district.

THE FACTS

I. Mr. Patton Formed Route Consultant to Profit From the Lucrative Business Opportunity He Saw in ISPs and TSPs

30. Mr. Patton formed Route Consultant in or around 2019. As described above, Route Consultant is a consultancy business for ISPs and TSPs and those considering starting an

ISP or TSP business that provides advice on, among other things, buying and selling FXG routes, ISP and TSP ownership and operations advice, and advice on fleet strategy. Specifically, Route Consultant claims to offer “consulting services to new and experienced professionals in the logistics community [that] . . . include acquisition strategy, business valuations, operations, efficiency, post-close support, compliance review, and . . . maintains an exclusive portfolio of routes and runs for sale across the United States.”

31. For those considering starting an ISP or TSP business, Route Consultant publicizes ISP and TSP businesses that are currently for sale across the country. Route Consultant claims on its website that it “facilitate[s] the greatest share of transactions in the space.”

32. Additionally, Route Consultant offers a program called “FedEx Routes for Sale 101,” which includes more than 30 videos, podcasts, and articles regarding, among other things, (i) Can I Buy FedEx Routes?; (ii) Types of FedEx Routes; (iii) How Much Money Do FedEx Routes Make; (iv) Choosing Between P&D [package and delivery] and Linehaul; (v) Why You Should Invest in FedEx Routes for Sale; (vi) Can I Buy Just 1 Route; (vii) Potential Threats to FedEx Ground Route Business; (viii) How Much Do FedEx Routes Cost; (ix) Can I Finance Fedex Routes; (x) How to Find the Right FedEx Routes for Sale; (xi) Do I Need to Own a FedEx Route Close to My Home; and (xii) How to Distinguish Yourself as a Buyer.

33. Route Consultant also offers a 12-week course on acquisition strategy that purports to teach potential investors how to successfully identify, acquire, and operate a FXG business. The acquisition course alone costs approximately \$15,000.

34. For new ISPs and TSPs, Route Consultant offers programs on, among other things: (i) counseling for the first 90 days after an ISP or TSP purchase, which is referred to as

“Post-Close Milestone Support”; (ii) new investor summits that purportedly provide a “crash course” in FXG routes; and (iii) “Mastermind” training, which is described as an “ultra-elite opportunity to grow your business in a mastermind of driven contractors.” Route Consultant charges in excess of \$12,000 for certain of these programs.

35. For existing ISPs and TSPs, Route Consultant offers, among other things: (i) audit compliance review services; (ii) dynamic route optimization support packages; (iii) driver recruiting market analysis; (iii) assistance preparing a claim for employee retention credit with the IRS; (iv) basic industry training, business valuation advice; and (v) profitability consulting. Route Consultant charges in excess of \$10,000 for certain of these services.

36. In promoting his Route Consultant business, Mr. Patton has described ISPs as a lucrative business opportunity with potential for immense profitability given that ISPs can see “returns of more than 20% a year.”

37. As reported less than one year ago, in August 2021, Mr. Patton described FXG routes as an “asset class that no one knows about” and predicted then that most ISPs would see their sales double over the next three years. *See* <https://www.bloomberg.com/news/articles/2021-08-27/fedex-fdx-ground-delivery-becomes-road-to-riches-amid-ecommerce-boom>.

38. As a result, Mr. Patton described the opportunity to invest in an FXG route as “like buying Apple at \$1 a share.” *Id.*

39. In fact, Mr. Patton’s Route Consultant website continued at the time of this filing to display an article supporting this proposition, in all capital lettering, that “FEDEX ROUTES ARE A STRONG AND GROWING INVESTMENT” at <https://www.routeconsultant.com/industry-insights/are-fedex-routes-good-investments>.

II. Mr. Patton's Campaign Against FXG On Behalf of Route Consultant

40. Contrary to the foregoing statements regarding the potential profitability of becoming an ISP, including statements in the last few months and articles currently available on Route Consultant's website, Mr. Patton launched a campaign in or around July 2022 to promote his Route Consultant business by creating a fictionalized crisis between FXG and its ISPs and TSPs as an advertisement for the purported need for Route Consultant's consultancy and other services.

41. The linchpin of Mr. Patton's campaign against FXG is his false assertion that ISPs and TSPs generally are "financially collapsing under the weight of the[] dramatic cost changes" created by the nation's present economic situation "that have gone unaddressed by FedEx Ground in 2022."

42. Mr. Patton claims that FXG's network of ISPs and TSPs supposedly is "in significant peril" and FXG supposedly is "completely tone deaf" and a "bully" in response to the purported economic hardships of its ISPs and TSPs.

43. Mr. Patton's campaign against FXG is intended to influence large numbers of ISPs to seek to renegotiate their contracts with FXG and then to position himself, on behalf of Route Consultant, in the middle and as a beneficiary of those renegotiations.

44. Mr. Patton, on behalf of Route Consultant, is seeking to position Route Consultant as the industry leader in providing consultancy and other services to ISPs and TSPs to represent ISPs and TSPs either generally in collective negotiations with FXG or as a consultant to particular ISPs in their individualized negotiations with FXG.

45. Mr. Patton's campaign against FXG is also intended to drive business toward Route Consultant's various services offered to ISPs and TSPs, including, among other things, (i)

consultancy services; (ii) brokerage services for ISPs and TSPs interested in selling their businesses and assigning their ISP or TSP contracts; (iii) instructional courses and programs; (iv) the Route Consultant Purchasing Alliance; and (v) Hello Truck Lease. Such services are extremely lucrative to Route Consultant.

46. Mr. Patton launched his campaign against FXG on or about July 20, 2022 through three channels of communication under the Route Consultant banner: (1) sending a “Letter of Assurance” to FXG purporting to describe the economic hardship facing ISPs and TSPs and demanding certain across-the-board modifications to FXG’s agreements with ISPs and TSPs, which also was published on Route Consultant’s website and made available by hyperlink on Route Consultant’s YouTube channel; (2) posting various videos on Route Consultant’s YouTube channel that encourage ISPs to seek to renegotiate their contracts with FXG in light of the issues described in the “Letter of Assurance;” and (3) issuing a press release on behalf of Route Consultant through a public relations firm called Sheridan PR titled, “Route Consultant Founder Spencer Patton Calls for Network-Wide Financial Remedies for FedEx Ground Contracted Service Providers (CSPs),” which reiterates that main themes of the Letter of Assurance and YouTube videos.

A. Letter of Assurance

47. The “Letter of Assurance” begins with the disclaimer that “Route Consultant is not endorsed by and is not recommended by Federal Express Corporation and FedEx Ground. Route Consultant is not sponsored by, is not approved by, is not associated with, and has no connection whatsoever with Federal Express Corporation or FedEx Ground.” This disclaimer demonstrates both that the Letter of Assurance was sent on behalf of Route Consultant and that, although ostensibly addressed to FXG, the audience for the Letter of Assurance actually was the

ISPs and TSPs, not FXG, since FXG obviously knew already that it was not affiliated in any way with Route Consultant.

48. In the Letter of Assurance, Mr. Patton acted as a purported spokesman for ISPs and TSPs generally and presented common positions on negotiations and dealings with FXG, demanding (1) an “increase in compensation” for all ISPs and TSPs; (2) “a clear timeline for network-wide renegotiation” of agreements with all ISPs that “will remain open until November 25, 2022”; and (3) a reassessment of the viability of Sunday delivery for all ISPs.

49. Further demonstrating that the intended audience for the Letter of Assurance was ISPs and TSPs, not FXG, and that the purpose of the Letter of Assurance was to promote Route Consultant’s consultancy and other services and to influence ISPs and TSPs to purchase such services, Mr. Patton stated “[t]o all non-FedEx Ground readers of this letter: do your research and ask the hard questions that reveal the extent of this crisis.”

50. The Letter of Assurance also promoted the annual Route Consultant Contractor Expo + Party to be held in Las Vegas on August 20-21, 2022. The Letter of Assurance stated that “more than half of all CSPs in the United States will gather at the Paris Hotel in Las Vegas” for the event and there:

Route Consultant Purchasing Alliance will announce formation of a 10-person CSP Committee. This committee will be a unified voice to FedEx Ground, empowered with the collective authority to speak on behalf of thousands of CSPs across the United States. The committee’s initial focus will be the ongoing negotiations with FedEx Ground for the changes that CSPs urgently need, within the timeframe of November 25, 2022.

B. Videos Posted on Route Consultant’s YouTube Channel

51. Mr. Patton has posted multiple videos on Route Consultant’s YouTube channel directed toward ISPs and TSPs, each of which has been viewed thousands of times. In an approximately thirteen (13) minute video titled “FedEx Ground: A Letter of Assurance” that was

available at <https://youtube/hvEGS-dqv6s>, Mr. Patton said that the purpose of the video is to “state our request for FedEx Ground to adjust compensation across the board” for all ISPs and TSPs. A statement posted on YouTube with the video further states, in part: “In a video appeal and supporting letter, Spencer Patton, Founder + President of Route Consultant, urged FedEx Ground to provide substantial financial remedies to its base of 6,000+ Contracted Service Providers (CSPs) by November 25, 2022.”

52. Mr. Patton also posted on Route Consultant’s YouTube channel a truncated version of the “FedEx Ground: “A Letter of Assurance” video titled “In Brief: A Letter of Assurance” that was approximately three (3) minutes in length. This video was available at <https://www.youtube.com/watch?v=SzdNsIoq3JE>.

53. Additionally, Mr. Patton posted an approximately fifty (50) minute video titled “Discussion of the Letter of Assurance to FedEx Ground” at <https://www.youtube.com/watch?v=-EqaSCpi1-c>.

C. Route Consultant Press Release

54. The July 20, 2022 press release issued on behalf of Route Consultant likewise “urged FedEx Ground to provide substantial financial remedies to its base of 6,000+ Contracted Service Providers (CSPs) by November 25, 2022”; requested “an increase in stop pay for P&D [I]SPs of \$0.50 per stop and an increase of \$0.20 per mile for linehaul [T]SPs”; and asked FedEx Ground to “reevaluate its commitment to Sunday deliveries.”

55. Route Consultant’s press release reiterated that “the CSP base will meet for their annual Expo in Las Vegas this year, on August 20 and 21, and will elect a committee of 10 CSPs to speak as a unified voice to FedEx Ground.”

56. In connection with his campaign against FXG to promote Route Consultant, Mr. Patton also launched the use of the hashtag #purplefriday. Consistent with the ultimatum deadline of November 25, 2022 in the Letter of Assurance, the videos and the press release, the intention of the hashtag is to influence ISPs and TSPs to disrupt their FXG route service on Black Friday on November 25, 2022, historically one of the busiest periods of the year for FXG's business.

III. Mr. Patton Continued His Campaign Against FXG on behalf of Route Consultant Despite Being Notified By FXG of Potential Violations of His Contractual Obligations

57. In response to Mr. Patton's July 20, 2022 Letter of Assurance, YouTube videos and press release, FXG sent Mr. Patton a cease and desist letter on July 26, 2022. Among other things, FXG demanded that Mr. Patton confirm in writing that he would: (1) cease all advocacy on behalf of any service providers other than Patton ISPs; (2) delete the Letter of Assurance, YouTube video and press release from all sites controlled by Mr. Patton; (3) renounce any plans to move forward with an ISP and TSP negotiation committee; (4) refrain from additional public statements regarding the terms of the contracts or business relationships between FXG and the ISPs and TSPs; and (5) stop disparaging the service brand and reputation of FedEx Ground.

58. On July 27, 2022 FXG also sent a letter to all ISPs and TSPs addressing Mr. Patton's Letter of Assurance and YouTube videos.

59. Upon receipt of FXG's July 27, 2022 correspondence, Mr. Patton continued his campaign to promote Route Consultant by disparaging FXG, posting the following response on social media:

**FEDEX GROUND CONTRACTORS****Spencer Patton** · 2m ·

For the first time ever, a FedEx Ground CEO sent a public message to 6,000 CSPs targeting a single CSP. His message, calling for us to do the same old "request renegotiation" and "discuss with FedEx" is pretty insulting to all CSPs' intelligence.

I am not afraid of their threats. I have received more than 1,000 messages in 7 days from CSPs — all with a renewed sense of hope and a recognition that they are "all-in" right alongside me. I will lead from the front lines and will never ask anyone to do anything that I won't do myself.

We'll release a formal response shortly — but believe me when I tell you — we have so much momentum from contractors in terminals across the nation. We've all finally had enough of the same old corporate speak.

**Like****Comment****Send**

60. In a half-hearted attempt to appear as if he was being responsive to FXG's expressed concerns, Mr. Patton responded to FXG's cease and desist letter on August 3, 2022, in which he ostensibly represented that he (i) "plan[ned] to publicly clarify that [he] and the Patton SPs, in [their] individual capacities, do not and will not represent or speak on behalf of any other Contract Service Providers ("CSPs") for purposes of contract negotiations or common dealings with FedEx Ground;" (ii) will include in such clarification "a statement that [he is] not calling for any specific price negotiation terms with FedEx Ground; (iii) "will remove [his] July 20, 2022 Letter of Assurance (the "Letter") and the cited YouTube video from sites for which [he has] the direct ability to do so;" and (iv) is "not planning to form a committee that is authorized to speak on behalf of other CSPs for purposes of collectively negotiating directly with FedEx Ground."

61. Despite these purported representations, Mr. Patton has continued his campaign against FXG to promote Route Consultant by disparaging and undermining FXG. In doing so, Mr. Patton has continued to position himself as the self-appointed spokesperson for the ISPs and TSPs against FXG to exploit that enhanced stature and influence for the benefit of Route Consultant.

62. For example, in the August 3, 2022 letter, Mr. Patton stated that, while he was not intending to pursue joint negotiations through a committee, he instead intended “to form a trade association to lawfully advocate with federal and state governments for better conditions for independent contractors serving the package delivery industry.”

63. Similarly, Mr. Patton removed the video titled “FedEx Ground: A Letter of Assurance” and the Letter of Assurance itself from Route Consultant’s website and YouTube channel by August 10, 2022 but the video titled “Discussion of the Letter of Assurance to FedEx Ground” remains accessible.

64. On August 3, 2022, Mr. Patton posted a new video on Route Consultant’s YouTube channel titled “A Follow-Up to our Conversations with FedEx Ground” at https://www.youtube.com/watch?v=b47s_pxwOiM. Throughout the August 3, 2022 video Mr. Patton continued to promote Route Consultant by advocating on behalf of all ISPs and TSPs, repeatedly referring to collective positions using “we” or “us.” Among other things, Mr. Patton launched a new line of attack against FXG by threatening legal challenges that ISPs and TSPs supposedly qualify as franchisees, stating “I am informed that there is a three-pronged test for franchisee classification and we have a very compelling case on all three prongs, especially in light of FedEx Ground’s recent introduction of Schedule C [sic]. A shift in that classification would be a game changer for us.”

65. Also contrary to the representations in Mr. Patton's August 3, 2022 letter, the FAQs posted with the August 3, 2022 video also include the statement "Of note, we are currently advocating on behalf of FedEx Ground contractors for renegotiations in individual markets."

66. On August 10, 2022, Mr. Patton posted another video on Route Consultant's YouTube channel at <https://www.youtube.com/watch?v=hRxGJAwN8xU>, in which Route Consultant solicits nominations for a 10-person "Trade Association of Logistics Professionals Leadership Committee" to be elected at Route Consultant's Expo + Party in Las Vegas on August 20-21, 2022. The description for the video states that "[t]he elected 10-person committee will promote the common business interests of its members." *Id.*

67. In the August 10, 2022 video, Mr. Patton continued to promote Route Consultant by undermining FXG's relationship with its ISPs and TSPs, contending that ISPs and TSPs, collectively, have a good arguments that they supposedly qualify as franchisees and he explains the elements supposedly required for qualification as a franchisee.

68. On August 24, 2022, Mr. Patton posted yet another video on Route Consultant's YouTube channel at <https://www.youtube.com/watch?v=dKhw0cfNbxA> titled "2022 Expo Recap & Initial Address of FedEx Ground TSP Rate Announcement." This latest video contains additional false or misleading statements regarding FXG and its commercial activities, as described below.

69. On information and belief, Route Consultant has profited, and will continue to profit, from Mr. Patton's campaign against FXG described herein by providing consultancy and other services to ISPs and TSPs.

IV. Mr. Patton's Communications On Behalf Of Route Consultant Contain Multiple False or Misleading Statements

70. Mr. Patton's various communications on behalf of Route Consultant described above contain multiple false or misleading statements concerning FXG and/or its commercial activities, including, among other things, the following statements:

- (a) after referencing the economic changes over the past 12 months, stating "there has been no financial adjustment in any capacity";
- (b) after referencing two letters of concern that an anonymous group of FXG ISPs purportedly wrote earlier in 2022, stating that despite FXG's invitation for conversation "[i]n reality, those conversations did not result in financial adjustments for the CSPs who desperately needed it";
- (c) the "average FedEx Ground business run by a CSP currently operates on profit margins below 0%";
- (d) since the Q4 of 2020, the industry has seen "a 15% pullback on the value of routes because...there is more economic uncertainty, you have rising interest rates, you have the stock market that is declined meaningfully";
- (e) "the current CSP financial model is collapsing due to substantial increases in the cost of fuel, labor, and vehicles over the past 12 months";
- (f) pointing to "soaring levels of CSP default rates as evidence of the current financial stress within the network";
- (g) "I am calling for FedEx ground to recognize that its independent contractors are in financial distress";
- (h) "FedEx Ground has not addressed the financial needs of contractors as a result of fuel prices doubling, wage costs going up, and vehicle costs going up"; and

(i) “Almost all of the other contractors that had renegotiation requests were also denied.”

71. The foregoing statements are false or misleading because, among other reasons, the reality is that FXG’s service providers earn average annual revenue of approximately \$2.3 million dollars, a figure that has doubled over the last four years; ISPs have requested mid-contract renegotiations for only about 10% of their agreements in 2022; FXG has consented to approximately 40% of renegotiation requests since July 1, 2022; and over 90% of those renegotiations led to agreement on new terms that resulted in higher contractual payments to the ISPs.

72. Furthermore, an industry analyst recently analyzed the data for 100 ISP businesses currently for sale on Route Consultant’s own website and calculated that “these businesses generated an operating margin of 16.0%.” The industry analyst further noted that “these ISP businesses are being sold for an average multiple of 0.8x Sales and over 2x their fleet value.” The industry analyst, therefore, concluded “these are certainly not businesses in distress.”

73. Moreover, in an effort to mislead potential Route Consultant customers or clients as to his alleged knowledge of, and influence within, FXG’s network of ISPs and TSPs, Mr. Patton has falsely overstated the size of his FedEx businesses by stating, “I have about 225 routes, 275 trucks on the road across 10 different states.”

V. August 20-21, 2022 Route Consultant Contractor Expo + Party

74. On August 20-21, 2022, Route Consultant held its Contractor Expo + Party in Las Vegas. Route Consultant promoted that 3000 of the approximately 6000 ISPs and TSPs were attending the Contractor Expo + Party.

75. At the Route Consultant Contractor Expo + Party, Mr. Patton gave the keynote address on both Saturday, August 20, 2022 and on Sunday, August 21, 2022.

76. Mr. Patton's keynote address on Saturday night, August 20, 2022, was subsequently posted on Route Consultant's YouTube channel. The text posted with the video states, in part, "Learn more about Route Consultant: <https://www.routeconsultant.com/>."

77. Mr. Patton indicated several times during his keynote address that he had received legal advice as to what he could say and not say.

78. For example, Mr. Patton evidently is concerned about the very claims alleged herein. Calling to mind the Shakespeare quote, "The lady doth protest too much, methinks," Mr. Patton defensively stated: "I have to communicate and say this is not a marketing stunt. This is not an effort to advance consulting in my business. How crazy would that be? That's one of the lines that has been circulated out there to say that Spencer is doing this so that more people will purchase consulting in the business."

79. The fact that Mr. Patton felt the need to make such a statement itself proves that Mr. Patton's communications can be reasonably understood to be promotion on behalf of Route Consultant.

80. In his keynote address, Mr. Patton also expressed concerns as to the potential antitrust implications of coordinated activities among the ISPs and TSPs:

[t]here are laws in our nation that protect FedEx and other business businesses against antitrust. Things like organizing a horizontal group boycott or price fixing. Those are laws in our country. And what that means is that I am only allowed to speak of what my own individual business intentions are. There is no room for me to be able to call for some type of horizontal group boycott. There is no room for me to be able to call for price fixing or anything like that.

81. Specifically, Mr. Patton addressed "Purple Friday," which he described as "an important part of this discussion." Mr. Patton stated: "Purple Friday is where I am speaking on

behalf of my own individual businesses and saying that I financially am unable to continue operations beyond November 25th, 2022. This business model is hurting to a degree where my company individually has to see a change from FedEx Ground.”

82. Although Mr. Patton claimed to be speaking only “on behalf of [his] individual businesses,” he plainly was attempting to influence a group walk-out or boycott by ISPs and TSPs on November 25, 2022. As Mr. Patton well knows, November 25, 2022 is the day after the 2022 Thanksgiving holiday and commonly referred to as “Black Friday,” which is widely known to be one of the busiest days of the year in the United States for retail shopping and as well is the traditional start of FXG’s peak season, when it has the highest volumes of packages shipped in its network.

83. In this regard, Mr. Patton subsequently stated:

If I wanted to hurt FedEx Ground, which I’m trying to make exceedingly clear that I don’t, if I wanted to hurt FedEx Ground, then I would have said Purple Friday is happening 72 hours from the release of this video. But I didn’t do that. I said Purple Friday is happening four months from the release of my opening video to allow for . . .

Four months from the release of my opening video to allow for massive amounts of time. And you know what, the most heat that I’ve taken so far is actually from contractors saying, ‘I can’t make it to November 25th, Spencer, I can’t make it.’ And I have had some of the most heartbreaking calls over the last 40 days as contractors that said, ‘Spencer, I’m declaring bankruptcy today, but I’m so thankful that you’re giving this message. It’s a message that needs to be said.’ So Purple Friday is my way of trying to work with FedEx Ground to say, we have to have a timeline.

84. Tellingly, Mr. Patton would not have reason to be speaking to other contractors about “Purple Friday,” and there would be no reason for other contractors to tell Mr. Patton that they “can’t make it to November 25th,” if as Mr. Patton claims he was only speaking on behalf of his own businesses regarding “Purple Friday.”

85. Further evidencing that “Purple Friday” is not limited to Mr. Patton’s own businesses, apparently t-shirts were distributed to contractors at the Route Consultant Contractor Expo + Party in support of “Purple Friday.” As indicated by the image below, the t-shirts were purple with the image of a slingshot and hashtag “#PurpleFriday,” presumably to signify the “David vs. Goliath” analogy of ISPs/TSPs vs. FXG that Mr. Patton has invoked in his communications:



86. A press release issued by Sheridan PR on behalf of Route Consultant following the Route Consultant Contractor Expo + Party on August 22, 2022 left no doubt as to Mr. Patton’s intentions, stating unequivocally: “Patton operates 225 FedEx Ground routes in 10 states. Starting November 25, 2022, he will no longer operate his routes if the financial terms of his contracts aren’t adjusted.”

87. FXG has been advised that other ISPs and TSPs may be considering withholding service on “Purple Friday” in response to Mr. Patton’s direction.

88. Based on the foregoing, Mr. Patton’s statements claiming not to be seeking to influence a group boycott of ISPs and TSPs on “Purple Friday” constitute additional false or misleading statements in connection with his campaign against FXG.

89. In reality, Mr. Patton created “Purple Friday,” and the fictional crisis on which it is predicated, as a rallying cry to continue to position himself as the self-appointed spokesperson for the ISPs and TSPs against FXG in order to exploit that enhanced stature and influence for the benefit of Route Consultant.

VI. Immediate Consequences of Mr. Patton’s Campaign Against FXG

90. Picking up on the information disseminated by Mr. Patton and Route Consultant, financial and industry press recognize the potential for severe disruption of FXG’s business and have characterized the Mr. Patton’s actions as fomenting a “revolt” by FXG’s ISPs and TSPs, including at peak shipping times during the holiday season.

91. Bloomberg has likewise described “a burgeoning feud” and a “brewing storm” between FXG and the ISPs and TSPs. Bloomberg has further reported that ISPs and TSPs “are threatening to band together to demand more money amid rising costs” but “FedEx is refusing to negotiate with them as a group.”

92. Industry press report that “tension continues to brew” between FedEx Ground and certain of its ISPs and TSPs in the aftermath of the launch of Mr. Patton’s campaign. *See* <https://www.supplychaindive.com/news/fedex-ground-contractor-alliance-spencer-patton-ceo-john-smith-response/628813/>.

93. The financial press also has characterized the actions by the ISPs and TSPs as “unprecedented,” as having unpredictable effects on FXG’s profit margins, and as creating significant questions about its ability to meet its service requirements.

94. Reports have noted that if Mr. Patton’s demands are not satisfied, FedEx Ground “deliveries could slow.” *See* <https://www.wcpo.com/news/local-news/something-is-going-to-break-here-fedex-contractors-say-deliveries-could-slow-as-interest-rates-increase>.

95. Financial analysts have regularly reported on Mr. Patton's campaign against FXG, including attending the Route Consultant Contractor Expo + Party, after which one analyst issued a report titled, "Fear & Loathing in Las Vegas . . . Notes From the ISP Expo." In that report, the analyst stated, "it's clear that there are structural problems here. We continue to believe the Ground ISP model, which is broken and inefficient, needs an overhaul for FedEx Ground to ultimately achieve the results shareholders expect."

96. This unfavorable press has the tendency to create concerns at FXG's customers and to erode FedEx Ground's goodwill among its ISP and TSP network as well as in the market.

97. In fact, FXG has learned that its competitors have sought to exploit Mr. Patton's campaign against FXG in efforts to attempt to poach existing FXG customers.

CAUSES OF ACTION

COUNT I

Violation of Section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B)

98. Each of the foregoing allegations is incorporated herein by reference and reasserted as though fully set forth at length.

99. As described herein, Mr. Patton on behalf of Route Consultant has made false or misleading statements of fact, including, among other things, the statements alleged above, concerning FXG's commercial activities and/or the services provided pursuant to the FXG brand.

100. As described herein, the false or misleading statements of fact, including, among other things, the statements alleged above, made by Mr. Patton on behalf of Route Consultant, were made in commercial advertising or promotion.

101. As described herein, the false or misleading statements of fact, including, among other things, the statements alleged above, made by Mr. Patton on behalf of Route Consultant, are literally false and/or actually or tend to deceive a substantial portion of the intended audience.

102. As described herein, the false or misleading statements of fact, including, among other things, the statements alleged above, made by Mr. Patton on behalf of Route Consultant, are material in that they are likely to influence the ISPs' and TSPs' decisions of whether to seek Route Consultant's consultancy and other services.

103. The conduct described herein by Mr. Patton on behalf of Route Consultant is in violation of Section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

104. As a direct and proximate result of the conduct described herein by Mr. Patton on behalf of Route Consultant, FXG has been injured.

COUNT II
Violation of Tenn. Stat. § 47-18-104 & 109

105. Each of the foregoing allegations is incorporated herein by reference and reasserted as though fully set forth at length.

106. As described herein, Mr. Patton on behalf of Route Consultant has made false or misleading statements of fact, including, among other things, the statements alleged above, concerning FXG's commercial activities and/or the services provided pursuant to the FXG brand.

107. As described herein, the false or misleading statements of fact, including, among other things, the statements alleged above, made by Mr. Patton on behalf of Route Consultant, disparaged FXG's commercial activities and/or the services provided pursuant to the FXG brand within the meaning of the Tennessee Consumer Protection Act, T.C.A. § 47-18-104(b)(8).

108. As described herein, the false or misleading statements of fact, including, among other things, the statements alleged above, made by Mr. Patton on behalf of Route Consultant, misrepresented the standard, quality or grade of FXG's commercial activities and/or the services provided pursuant to the FXG brand within the meaning of the Tennessee Consumer Protection Act, T.C.A. § 47-18-104(b)(7).

109. As a direct and proximate result of the conduct described herein, by Mr. Patton on behalf of Route Consultant, FXG has suffered an ascertainable loss of money or property, including, among other things, damage control expenses resulting from the campaign against FXG by Mr. Patton on behalf of Route Consultant.

PRAYER FOR RELIEF

WHEREFORE, FXG respectfully requests that this Honorable Court enter judgment in favor of FXG and award FXG the following relief:

(1) actual damages suffered by FXG as a result of the unlawful conduct complained of herein, including, without limitation, damage control damages resulting from Mr. Patton's campaign against FXG on behalf of Route Consultant, under the Lanham Act, 15 U.S.C. § 1117(a), and the Tennessee Consumer Protection Act, T.C.A. § 47-18-109(a)(1);

(2) disgorgement of Route Consultant's profits as a result of the unlawful conduct complained of herein under the Lanham Act, 15 U.S.C. § 1117(a);

(3) trebled damages as a result of the willful and knowing unlawful conduct described herein by Mr. Patton on behalf of Route Consultant under the Tennessee Consumer Protection Act, T.C.A. § 47-18-109(a)(3)&(4);

(4) a permanent injunction enjoining further unlawful conduct by Mr. Patton on behalf of Route Consultant;

(5) attorneys' fees and costs under the Lanham Act, 15 U.S.C. § 1117(a) and/or the Tennessee Consumer Protection Act, T.C.A. § 47-18-109(e)(1); and

(6) such other and further relief as this Court deems just and appropriate.

JURY TRIAL DEMANDED

Dated: August 26, 2022

Respectfully Submitted,

/s/ Jason W. Callen

Jason W. Callen
TN Bar #015076
K&L GATES LLP
501 Commerce St.
Suite 1500
Nashville, TN 37203
Jason.Callen@klgates.com
(615) 780-6729

Thomas J. Smith (pro hac vice forthcoming)
Patrick McElhinny (pro hac vice forthcoming)
Curtis B. Krasik (pro hac vice forthcoming)
K&L GATES LLP
210 Sixth Ave.
Pittsburgh, PA 15222
Thomas.Smith@klgates.com
Patrick.McElhinny@klgates.com
Curtis.Krasik@klgates.com
(412) 355-6500